

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT CARR,

Plaintiff-Appellant,

v

STARR INDEMNITY & LIABILITY
COMPANY,

Defendant-Appellee.

UNPUBLISHED
September 18, 2014

No. 316359
Wayne Circuit Court
LC No. 12-006002-NF

Before: OWENS, P.J., and JANSEN and O'CONNELL, JJ.

PER CURIAM.

In this action for first-party no-fault benefits, plaintiff appeals by right the trial court's order granting summary disposition in favor of defendant. We affirm.

I. REQUEST FOR ADMISSIONS

Plaintiff first argues that the trial court erred by deeming defendant's request for admissions admitted because defendant's request for admissions was served after the completion of discovery and the trial court should have allowed plaintiff to file his answers late. We disagree.

A trial court's decision to permit a party to withdraw or amend its admissions or to file late responses to a request for admissions is reviewed for an abuse of discretion. *Bailey v Schaaf*, 293 Mich App 611, 620; 810 NW2d 641 (2011), remanded in part on other grounds 494 Mich 595 (2013); see also *Janczyk v Davis*, 125 Mich App 683, 691; 337 NW2d 272 (1983). "An abuse of discretion occurs when the [trial court's] decision results in an outcome falling outside the principled range of outcomes." *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006). Further, "[i]nterpretation of a court rule is a question of law that this Court reviews de novo." *Wilcoxon v Wayne Co Neighborhood Legal Services*, 252 Mich App 549, 553; 652 NW2d 851 (2002).

MCR 2.312(A) and (B) provide in pertinent part:

(A) Availability; Scope. Within the time for completion of discovery, a party may serve on another party a written request for the admission of the truth of a matter within the scope of MCR 2.302(B) stated in the request that relates to

statements or opinions of fact or the application of law to fact, including the genuineness of documents described in the request. . . . Each matter of which an admission is requested must be stated separately.

(B) Answer; Objection.

(1) Each matter as to which a request is made is deemed admitted unless, within 28 days after service of the request, or within a shorter or longer time as the court may allow, the party to whom the request is directed serves on the party requesting the admission a written answer or objection addressed to the matter.

Any matter that is “admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of an admission. For good cause the court may allow a party to amend or withdraw an admission. The court may condition amendment or withdrawal of the admission on terms that are just.” MCR 2.312(D)(1).

In *Janczyk*, 125 Mich App at 692-693, this Court held that a trial judge must balance three factors in determining whether to allow a party to file late answers to a request for admissions:

[T]he trial judge is to balance three factors in determining whether or not to allow a party to file late answers. First, whether or not allowing the party to answer late “will aid in the presentation of the action.” In other words, the trial judge should consider whether or not refusing the request will eliminate the trial on the merits. . . . Second, the trial court should consider whether or not the other party would be prejudiced if it allowed a late answer. Third, the trial court should consider the reason for the delay: whether or not the delay was inadvertent. [Citations omitted.]¹

“When a trial judge is asked to decide whether or not to allow a party to file late answers to the request for admissions, he is in effect called upon to balance between the interests of justice and diligence in litigation.” *Id.* at 691.

Plaintiff’s argument that defendant’s request for admissions was improper because it was filed after the close of discovery is without merit. On January 14, 2013, the trial court extended the discovery period to March 14, 2013. A trial court has discretion to grant or deny discovery. *Reed Dairy Farm v Consumers Power Co*, 227 Mich App 614, 616; 576 NW2d 709 (1998). The trial court granted defendant’s motion to extend discovery because numerous discovery requests to plaintiff remained unanswered. Therefore, even though the trial court found that defendant had filed its request for admissions on December 14, 2012, one day after the original period

¹ Although *Janczyk* was decided under GCR 1963, 312.2, rather than MCR 2.312(D)(1), application of the *Janczyk* factors is still proper given that the “good cause” standard remains the same.

allowed for discovery, the court's subsequent extension of discovery placed that filing well within the amended discovery period.

Nothing in the record reflects any desire by the court to exclude the request for admissions from the discovery extension. However, even if the trial court did not intend to relate its discovery extension back to the date when defendant served plaintiff with the request for admissions, plaintiff did not follow the required procedures to object to defendant's request for admissions. In order for a trial court to grant a deviation from the 28-day period provided in MCR 2.312(B)(1), the party requesting the deviation must file a request with the court either before service or within a reasonable time thereafter, pursuant to MCR 2.312(F). The *Janczyk* factors only apply to a trial court's determination whether to allow a party to amend or file late answers to a request for admissions. *Janczyk*, 125 Mich App at 692-693. Here, plaintiff never filed an objection or response regarding defendant's request for admissions "within a reasonable time" after service, as he was required to do under MCR 2.312(F). Plaintiff's failure to object to the timeliness of defendant's request for admissions in the trial court within a reasonable time after its service precluded his later request to allow the late filing of his answers on that ground.

Finally, even if this Court were to apply the *Janczyk* factors to the trial court's decision, the trial court did not abuse its discretion by excluding the late-filed responses. The first factor to be determined is "whether or not allowing the party to answer late will aid in the presentation of the action. In other words, the trial judge should consider whether or not refusing the request will eliminate the trial on the merits." *Janczyk*, 125 Mich App at 692 (quotation marks and citation omitted). Because the deemed admissions solely supported defendant's request for summary disposition, this factor weighs in favor of allowing plaintiff's late answers to the request for admissions.

The second *Janczyk* factor is "whether or not the other party would be prejudiced if [the court] allowed a late answer." *Id.* It is not clear whether defendant would have been prejudiced by the late responses. Defendant had previously requested that the trial court compel plaintiff to comply with discovery requests, culminating in the court's entry of an order compelling plaintiff's responses to discovery. This order compelling plaintiff to respond was entered before defendant filed its motion seeking to have its requests deemed admitted. Therefore, it is arguable that plaintiff's dilatory behavior throughout the discovery period prejudiced defendant.

For the third *Janczyk* factor, "the trial court should consider the reason for the delay: whether or not the delay was inadvertent." *Id.* at 692-693. At no time in the litigation below did plaintiff ever support his claim that the delay was inadvertent. In fact, plaintiff provided no explanation for why his responses to defendant's request for admissions were untimely. Plaintiff did not meet his burden of proving that the delay was inadvertent. In fact, plaintiff's dilatory behavior throughout the entirety of the proceedings, extending even to plaintiff's late filing of his response to defendant's motion for summary disposition, shows not inadvertence but a willful disregard for court rules. Therefore, even after applying the *Janczyk* factors in this case, we would still conclude that the trial court did not abuse its discretion by denying plaintiff's request to file late responses and by deeming defendant's request for admissions admitted.

II. SUMMARY DISPOSITION

Plaintiff next argues that the trial court erred by granting defendant's motion for summary disposition on the basis of his deemed admissions. We disagree.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(10). "This Court reviews de novo a trial court's decision on a motion for summary disposition." *Allen v Bloomfield Hills Sch Dist*, 281 Mich App 49, 52; 760 NW2d 811 (2008). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012). In reviewing a grant of summary disposition under MCR 2.116(C)(10), this Court considers the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party. *Sallie v Fifth Third Bank*, 297 Mich App 115, 117-118; 824 NW2d 238 (2012). Summary disposition is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10); *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). A genuine issue of material fact exists when, after viewing the evidence in the light most favorable to the nonmoving party, the record leaves open an issue upon which reasonable minds may differ. *Debano-Griffin v Lake Co*, 493 Mich 167, 175; 828 NW2d 634 (2013).

As noted earlier, MCR 2.312(D)(1) provides:

A matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of an admission. For good cause the court may allow a party to amend or withdraw an admission. The court may condition amendment or withdrawal of the admission on terms that are just.

An admission under MCR 2.312 "conclusively establishes the admitted facts[.]" *Midwest Bus Corp v Dep't of Treasury*, 288 Mich App 334, 350; 793 NW2d 246 (2010). The purpose of requests for admissions "is not to discover facts but rather to establish some of the material facts in a case without the necessity of formal proof at trial . . . so that issues which are disputed might be clearly and succinctly presented to the trier of facts." *Radtke v Miller, Canfield, Paddock & Stone*, 453 Mich 413, 420 n 6; 551 NW2d 698 (1996) (citation omitted). This Court has specifically held that one party's deemed admissions, resulting from his or her failure to respond to the opposing party's request for admissions under MCR 2.312, may be sufficient to support the grant of summary disposition. *Janczyk*, 125 Mich App at 694.

Defendant's request for admissions included requests that plaintiff admit he was not (1) claiming any wage loss benefits, (2) claiming any medical expenses, (3) claiming any attendant care services, (4) claiming any prescription benefits, (5) claiming any medical mileage, (6) claiming any replacement services, (7) in need of any home modifications, (8) in need of further medical treatment, (9) in possession of other health insurance at the time of the accident, and (10) claiming any case-management or case-manager benefits. Once plaintiff was deemed to have admitted each of these requests, MCR 2.312(D)(1), it became clear that plaintiff was not seeking any compensable first-party no-fault benefits. See MCL 500.3105. Accordingly, the trial court correctly ruled that there was no issue of material fact and that plaintiff was not entitled to no-fault benefits.

Further, plaintiff's claim that the trial court abused its discretion by failing to analyze the *Janczyk* factors is without merit. At the hearing on defendant's motion for summary disposition, the trial judge explicitly stated that he had not "brush[ed] aside" the *Janczyk* analysis, but was basing his decision on plaintiff's disregard for the court rules. Disregard for the court rules is relevant under the third factor of *Janczyk*, i.e., the inadvertence of the delay. See *Janczyk*, 125 Mich App at 693. Moreover, even if the trial court had not addressed the *Janczyk* factors at all, the failure to apply these factors does not, by itself, establish an abuse of discretion when, as here, the trial court finds no good cause to allow late responses. See MCR 2.312(D)(1).

Affirmed. Defendant, having prevailed on appeal, may tax its costs pursuant to MCR 7.219.

/s/ Donald S. Owens
/s/ Kathleen Jansen
/s/ Peter D. O'Connell